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August 2, 2011

Joseph C. Szabo, Administrator
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: California High Speed Rail Project (Fresno to Bakersfield Segment)

Dear Administrator Szabo,

We write to you from the Great Central Valley of California, the Bread Basket of the World. The subject of this correspondence is the proposed California High Speed Rail Project (the "Project"). The Project is an approximately 800 mile rail line which will extend from San Francisco in the North, to Los Angeles/Anaheim in the South and eventually to the southernmost part of the State, San Diego. The Project is funded, in part, by more than \$6 billion in American Recovery and Reinvestment Act of 2009¹ ("ARRA") money and in part by a \$9 billion bond measure passed by the people of California in 2008 and codified and referred to as the *Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century*.² The Project is managed by a nine-member Board of Directors of the High Speed Rail Authority (the "Authority") created and appointed pursuant to California Public Utilities Code (§185020), and an Executive Director, who is appointed by the Board and who serves at the pleasure of the Authority (Id. at §185024).

The purpose of this letter is to provide you with background regarding the proposed Project, and to implore your assistance and coordination to ensure your agent, the Authority, complies with the National Environmental Policy Act of 1969 ("NEPA"), California's Environmental Quality Act (CEQA), other laws, and ARRA funding conditions in carrying out the Project. To date, the Authority has refused to coordinate with the County of Kings, despite its persistent demands in working toward the common interests of serving the public good.

Kings County has the duty to care for the public health, safety and welfare of its constituents and to protect its prime agricultural land, related economy and productive industry. The Authority's unsound actions and failure to act in response to the County's requests to coordinate and take into account our policies is not in accord with NEPA. Every route alternative being advanced by the Authority goes through Kings County, and yet, the Authority refuses to consider our concerns and the conflicts this creates with our short and long term plans. At the very least, the Authority should be studying, analyzing and developing an alternative in the federal EIS that would resolve the conflicts with our position as required at 42 USC 4332(E) and the implementing regulations, but they are not. As a result, the Authority's actions threaten to permanently change the stability of our local economy and way of life, all in the interest of timely spending ARRA funds. The Authority's "do-now, ask-forgiveness-later" attitude with billion dollar decisions must be stopped.

¹ Public Law 111-5

² California Streets and Highways Code §2704-2704.21 referred to herein as "the Act"

We request directly of you, Mr. Administrator, that you step in and insist that the Authority coordinate this Project with our County so that the conflicts with our position can be thoroughly analyzed and resolved prior to the release of the draft environmental document. In the absence of this happening, the duty falls to you, as the lead agency responsible for the preparation of the environmental document, to coordinate directly with Kings County.

We also request, that you refuse to approve the draft EIS for public release until such time as the Authority takes into account our position and prepares an alternative that resolves the conflicts with our policies. We must then have the opportunity to review this alternative prior to public release so that we can ensure the Authority has properly stated our position whereby decision makers and the public can be apprised of our position and the impacts to our County when making their comments.

Background

The Kings County Board of Supervisors (the "County Board") supports high speed rail. In fact, on May 25, 2010, it adopted Resolution No. 10-033, which specifically documents its resolution to: 1) Support the continuing development of high speed rail on a statewide basis; 2) Support a unified approach for the Central Valley, should the rail be designated to traverse through it; 3) Support routes that use existing transportation corridors and rights-of-way; and 4) **oppose any and all alignments where transportation corridors do not exist at the present time** (Emphasis Added). The "existing transportation corridor" requirement is consistent with the will of the People, as specifically indicated in the Act.

The County Board has grave concerns regarding a pre-selected alignment from Fresno to Bakersfield, as indicated by Authority documents that presume a final project decision even before release of the Draft Environmental Impact Statement. In addition, although the alignment begins on an existing transportation corridor (State Highway 99), it quickly digresses from the corridor and plows through miles of prime agricultural land. The County Board has expressed its concerns directly to the Authority and stated clearly that this Project may have potentially significant and devastating economic impacts on the County, as well as, conflicts with local policies and plans related to land use, resource conservation, the environment, and health and safety.

The County Board has attempted in good faith to engage the Authority in a process of government-to-government "Coordination" as required under NEPA in order to resolve project conflicts with County plans, policies and resources. The County Board sought information from the Authority on project details and on how the Authority would resolve the County's concerns. On March 4, 2011, the County Board sent a letter to Authority CEO Roelof van Ark, expressing concern that the Authority, to date, had not engaged in meaningful, good faith coordination with the County³.

The Authority eventually accepted the County Board's "invitation" to meet and designated Jeff Abercrombie, the Central Valley Area Program Manager, to work with the

³ See attached March 4, 2011 correspondence from Board to Authority

County Board to arrange a meeting⁴. On April 19, 2011, the County Board hosted a special meeting dedicated to the sole purpose of "Coordination"⁵. During the course of the multi-hour coordination meeting, the County Board detailed a list of potential impacts to be caused by the proposed Project, as described by a number of County department heads, local school district, and local water district, or their representatives, including the Sheriff, Fire Chief, Agricultural Commissioner, Public Works Director, Community Development Director, Kings County Water District Director and Kit Carson Elementary School District.

At the conclusion of the April 19, 2011 coordination meeting, the County Board requested a follow-up coordination meeting to allow Mr. Abercrombie the time to gather information necessary to respond to the numerous concerns raised. The Authority refused to cooperate and engage with the County Board in "Coordination" and instead indicated that coordination is not applicable to this Project. In spite of their refusal, they insist that they are conducting their environmental review in accord with NEPA and CEQA⁶.

The Authority is Refusing to Coordinate with Kings County

NEPA requires study of federal actions *before* they are taken and in coordination with local governments. Congress defined what it meant by coordination at 43 USC 1712 (c)(9) and the courts have affirmed this duty. The duty includes ensuring that the Authority, as your agent, gives consideration to local plans, resolves inconsistencies between Federal and non-Federal plans and provides meaningful involvement in the process. Specifically, NEPA states:

"....that it is the continuing policy of the Federal Government, in cooperation with the State and local governments, and other concerned public and private organizations, to use all practical means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."

"it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources...:" to, among other aspirations, "attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;... " (§101; Emphasis Added).

"[p]rior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be

⁴ See attached March 29, 2011 correspondence from Authority to Board

⁵ See attached extensive Agenda and supporting documents

⁶ See attached May 6, 2011 correspondence from Board to Authority

made available to the President, the Council on Environmental Quality, and to the public.... (§ 102; Emphasis Added).

Implementation of the stated coordination duty will allow us to assist your agent, the Authority, in reconciling the Project with our local plans and policies which are designed and adopted in accord with State law to carry out our duty to protect the health, safety and welfare of our constituents.

The Council on Environmental Quality directs federal agencies to conduct joint planning processes, joint environmental research and studies, and joint public hearings with state and local agencies in order to enhance coordination and reduce duplication between NEPA and State **and local requirements** (See 40 CFR, Volume 32, Section 1506.2.)

The Authority's refusal to coordinate is puzzling because the law is clear and the State of California understands the coordination duty of agencies implementing the federal law of NEPA. The State succeeded in an action against the U.S. Forest Service for its refusal to coordinate four federal forest management plan revisions with the State. The Federal Court required the Forest Service begin the NEPA process over, this time in coordination with the State. The case ultimately concluded with a settlement agreement in 2010, however, this occurred after the Service was ordered to coordinate with the State (See California Resources Agency v. US Department of Agriculture (2009 WL 6006102) (N.D. California)).

The same provision of NEPA that requires federal agencies to coordinate with states also requires coordination with local governments. Although it is the Authority refusing to coordinate with Kings County, courts will recognize that ultimately the duty to carry this out belongs with the Federal Railroad Administration – your agency. It is for this purpose that we are notifying you of the violation and requesting immediate compliance either directly by you or through clear instruction to your agent.

We are aware that the Draft EIS could be released for public comment any day. We are sending you this request so that you have notice that the document has been prepared without coordination with Kings County. The Authority has treated our County as if we are a part of the public, rather than an elected body charged with the duty of protecting the health, safety and welfare of the public. The Authority's refusal to answer our questions and develop an alternative that resolves our concerns is in direct violation of NEPA. We request that you withhold release of the Draft EIS until this duty has been met.

This duty was directed to the attention of the Authority's then Chairman, Curt Pringle at its May 5, 2011 meeting by Kings County Farm Bureau Director, Diana Peck. Ms. Peck received deplorable treatment as evidenced by the excerpt of the recorded meeting⁷. This did not keep her from advising the Chairman that the Authority's 2009 Coordination Plan acknowledges "...there is a critical need to engage and coordinate with a number of public agencies in the planning, design, permitting, construction, and implementation of this landmark statewide rail system." That it "... seeks to include Federal, State, regional, and local government agencies...", it "...promotes an efficient, streamlined process, as well as, good project

⁷ See attached May 5, 2011 excerpt of Curt Pringle Statement

management through coordination, scheduling, and early resolution of issues..." and "...represents a good faith, common-sense effort to identify and involve interested agencies early on, the objective being to raise and resolve issues as early and quickly as possible..." (Pg.1)

She pointed out that coordination had not been carried out with regards to Kings County, even though Kings County would be directly impacted by the Project. She questioned whether Chairman Pringle was aware of Authority staff member Abercrombie's recent statement to the Kings County Board of Supervisors that the Authority is not required to comply with the coordination requirements in the federal law.⁸ Mr. Pringle's response was unfitting for one chairing "the largest infrastructure project in the nation today." In short, he dismissed Ms. Peck and the County's concerns by stating that the Authority had done all it was going to do with regards to Kings County's and other local entity's positions.

Mr. Administrator, our position has not been meaningfully considered in this process, but rather blatantly ignored by the Authority. Our insistence that they fulfill their coordination duty under NEPA has been refused. The message is clear that the Authority has no regard for the direct impact this Project will have on the lives and livelihoods of the citizens of Kings County. They have an agenda to meet and will do so regardless of the devastating environmental and human consequences the Project will have on the communities in their way.

This top-down, agenda-driven-type of land use planning will not stand in Kings County. We have taken great care to thoughtfully plan for our future and the uses of our land. We insist that your Agent do the same for the portion of the HSR that may cross our County.

Mr. Abercrombie wrote to the Board of Supervisors on May 17, 2011⁹ and indicated the Authority is preparing for the release of a draft EIR/EIS. Rather than provide a follow-up "Coordination" meeting date to work to resolve conflicts, he stated that his staff wanted to meet to "verify that we have covered the issues of concern in the environmental document" and stated, as though he had never met with the County Board before, "[i]f there are issues of particular interest that you wish to discuss, please advise...".

Taken aback, the County Board again wrote to Mr. Abercrombie¹⁰. The County Board formally requested an administrative copy of the draft EIR/EIS prior to its distribution to the public for comments in order to ensure that the numerous issues and concerns raised by Kings County in its attempt to coordinate will be adequately and lawfully addressed.

On June 7, 2011, Mr. Abercrombie attended a second coordination meeting scheduled by the County Board. The meeting lasted 3-4 hours, but little information was obtained by the

⁸ Mr. Abercrombie's statement to Board of Supervisors on April 19, 2011: "...The Authority does not feel that the provisions you've cited in the Federal Land Policy Management Act or the ISTEPA are directly applicable to this project, nor do we agree with your review and legal basis for the effort of coordination. We are conducting our environmental reviews analysis according to NEPA and CEQA, CEQA being the most stringent process in the Nation with regards to what's required of infrastructure-type projects, but that said and what I've reiterated whenever I go to this type of meeting is, 'we are here to work with you, we are here to try and do our best to accommodate every issue that you raise, to work to getting it into the environmental document and into the environmental process to give you the information and the answers that you in the community are seeking.' So, over the course of the next several months, we do expect to be back here and I do expect to provide the answers that you are seeking. ..."

⁹ See attached May 17, 2011 correspondence from Authority to Board

¹⁰ See attached May 27, 2011 letter from Board to Authority

Board. In fact, the Board was met with more questions than answers. In frustration, County Supervisor Fagundes exclaimed that "...a system so extravagant and so costly, you should have answers – not just one day to the next."

We later learned that Mr. Abercrombie was instructed one hour prior to our meeting by the HSR attorney to refuse to answer our questions. For Mr. Abercrombie to have been sent to meet with our County Board in order to comply with your duty to coordinate, and then be instructed to refuse to answer our questions and work to resolve the impacts a potential rail project will have on our citizens and County services is deplorable. Clearly, the refusal to coordinate and comply with the law has become the policy of the Authority, not the exception.

The Authority's staff has been requesting to meet individually with our staff where they have stated they will reveal some of the draft plans. However, they have refused to provide this same level of accountability to the elected body governing the County.

During the meeting, the County's Ag Commissioner articulately explained why it was necessary for all the County staff and Supervisors to have the opportunity to understand in detail the Authority's plans in order to properly advise the project manager on the impacts that may occur and which must be rigorously analyzed in the environmental study.

"The San Joaquin Valley is a living being" ... "Farmland is a living, breathing entity. It's a renewable resource that provides food for this Country and to a certain extent, a lot of our foreign neighbors." ... and "this may be a 'traditional public works project', but in the State of California there are numerous regulations and laws with respect to agriculture." ... "So what I want to say about a coordinated meeting, Mr. Abercrombie, is public works doesn't know my job and I don't know theirs. I don't know the regulations that the Planning Department works under, but I know they have regulations and they don't know mine. We are individual specialists and to meet with us individually [behind closed doors out of the view of the public to present a 15% design draft to Public Works as requested by the Authority] is a divide and conquer approach to this. What was raised by our Public Works who knows about grade level and whatnot and knows the difference between Caltrans compaction and a railroad compaction rate brought to my mind, okay – where's the soil or what kind of material are you bringing in to do that grade separation? In my world where I work, I'm concerned about where the soil is coming from and what's in it and what affect it's going to have on the surrounding agriculture – not just in Kings County, but in the San Joaquin Valley collectively because as people move they bring with them the pests or diseases..."

Nevertheless, Mr. Abercrombie consistently refused to address the concerns and questions of the various departments of Kings County, saying he could not release administrative draft details. Despite the many planning, public safety, circulation and other impact related questions posed to the Authority in the meeting, the only real *answer* received is that Mr. Abercrombie could not answer and all the answers would come in the environmental document. In fact, the County's counsel inquired:

"Mr. Abercrombie, are you indicating then that... each and every one of the questions that was raised in this forum and others is going to be identified in the document [draft EIR/EIS] and an answer or comment or response given? Is that what you are saying?"

Mr. Abercrombie responded:

"All those questions are to be answered in the environmental draft document and I'll take a gander – that is our mission to accomplish, right? [seeking a response from other Authority personnel, which responded in the affirmative]."

Rather than re-cite the extensive list of issues and questions asked of Mr. Abercrombie by the County Board, compact discs containing the audio recordings from the April 19¹¹ and June 7, 2011¹² coordination meetings, as well as printed transcripts, are enclosed with this correspondence for your review.

However, the Authority clearly misses the purpose of coordination. It is not to disrupt their planning process but rather to improve the process and ensure all reasonable alternatives are taken into account so that the conflicts can be identified and resolved early in the process. It is unfortunate that the Authority is just now, at this late date, realizing they should have been aware of our local plans and policies. Still, they have only come to this realization because of our insistence that they follow the law. They should have taken our position into account at the beginning of their scoping process, not the end.

The Authority's CEO professes concern for agriculture with words, but not with actions. In a press release following a meeting with farmers and agricultural leadership at a regional conference held by the Madera County Farm Bureau in early 2011, Mr. van Ark indicated:

*"I'm committed to working with the agricultural community to develop win-win solutions. I will not remain in my office, rather I will be out here – in communities throughout the State and in the Valley, meeting with you, with agricultural groups and working together...."*¹³

This has not happened. Two separate demands to meet with the County's Board have been ignored. Instead, he sent a newly hired Jeff Abercrombie, self-professed Caltrans bridge builder who has little high speed rail project background and hired by the Authority in February 2011. The simplistic response to concerns over the destruction of agriculture-related economies in the Valley, such as that of Kings County's is that the Project will bring other jobs. Simply stating the Project will bring jobs and enhance the community's economic conditions does not justify the destruction of multi-generation industries, nor ensure employment to the displaced, nor explain to the County how its ag-dependent economy will be repaired and not further harmed. It does not explain how the two can co-exist in harmony.

In order to make good on such assurances, the Authority must critically analyze and thoroughly understand the industry. The County Board has attempted to educate the Authority

¹¹ See attached April 19, 2011 coordination meeting transcript and audio CD

¹² See attached June 7, 2011 coordination meeting transcript; audio recording is included on CD included with fn 11

¹³ See attached February 25, 2011 California High Speed Rail Press Release

regarding the industry and convey potential impacts and alternatives through coordination but such attempts have been wholly rejected by the Authority.

The Authority has Failed to Consider the Highway 99 Alternative

The County Board, U.S. Congressman Jim Costa, and California Senator Michael Rubio have urged the Authority to reconsider and not foreclose a valid alternative alignment that continues along Highway 99 from Fresno, California, to western Visalia, California (see fn¹⁴). Visalia has offered free land at its airport for a station at the junctures of Highway 99 and Highway 198, and is more aptly situated near population centers. Yet, the Authority has discarded this alternative alignment and fails to disclose their full reasoning behind the abandonment of a potentially viable alternative alignment. California Assemblyman David Valadao is concerned with the potential threat this project poses to Kings County and the destruction of prime agricultural land, which also threatens a safe and reliable food supply which "is vital to our national security."¹⁴

The Highway 99 alignment to western Visalia would resolve the conflicts with Kings County's long-term and short-term planning policies. This alignment is a "reasonable" route that is advocated not only by our County, but is welcomed by those directly impacted. It is an alternative that should be considered in the draft document soon to be released. At the very least, the Authority should be required to explain why it has dismissed this route.

NEPA provides specific direction as to how such a conflict should be handled in the environmental study. At 42 USC 4332(E), the Act mandates that the agency shall:

"(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources."(emphasis added)

The Authority is obligated to carry forward in the Draft EIS an alternative that resolves the conflicts between their proposed Project and our plans and policies. The Council on Environmental Quality (CEQ) regulations provide specific direction on how to resolve such conflicts with local plans and policies when preparing an environmental study.

First, the agencies are directed to consider the local position early in the process:

"Agencies shall integrate the NEPA process with other planning at the earliest possible time ... to head off potential conflicts" (40 CFR 1501.2).

Second, the purpose of the environmental study is to fully inform decision makers as to the human and environmental impacts of the proposal so that such impacts can be properly considered when determining whether or not to approve the project. The public shall have full disclosure of the impacts, not simply the filtered disclosure provided by the Authority's limited alternatives.

¹⁴ See attached August 16, 2010 letter from U.S. Congressman Jim Costa, June 7, 2011 letter from California Assemblyman David Valadao and July 20, 2011 letter from California Senator Michael Rubio

"It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." (42 CFR 1502.1)

"The statement shall be prepared early enough so that it can serve practically as an important contribution to the decision making process and will not be used to rationalize or justify decisions already made." (42 CFR 1502.5)

"This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment and the Environmental Consequences, it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public." (42 CFR 1502.14)

Simply addressing our questions in the Draft EIS in the manner stated by Mr. Abercrombie does not fulfill the Authority's duty under NEPA. A side-by-side comparison of their preferred route selections with one that would resolve the conflicts with our County is necessary. If the Authority does not do this, it will have deprived decision makers, including your agency, and the public, of the opportunity to be fully apprised of the impact to Kings County.

Third, the CEQ regulations very specifically require the Authority to analyze the conflict with our position when addressing the environmental consequences of their Project proposal.

*"It shall include discussions of: (c) **Possible conflicts between the proposed action and the objectives of Federal, regional, State and local land use plans, policies and controls for the area concerned.**" (42 CFR 1502.16)(emphasis added)*

We are convinced, because of Mr. Abercrombie's refusal to discuss our concerns, that the Authority in no way understands the full breadth of the conflicts of their alignment alternatives through Kings County. We are certain this lack of understanding will inhibit fulfillment of the CEQ regulations.

Fourth, the Authority's burden goes beyond just discussion of the conflict. The agency must work to reconcile its proposed alternatives with our County plans and policies.

*"To better integrate environmental impact statements into State or local planning processes, statements shall discuss any **inconsistencies** of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe **the extent to which the agency would reconcile its proposed action with the plan or law.**" (42 CFR 1506.2) (emphasis added)*

The Authority must develop an alternative that resolves our conflicts, and further describe how they will reconcile any inconsistencies between their preferred alignment and our position.

The core purpose of NEPA is to provide decision makers and the public with credible and reasonable analysis in order to consider if and how a project should move forward. The Authority's action to eliminate a rigorous study of the Highway 99 route, which can be compared side-by-side with their preferred routes, deprives the public of the opportunity to be apprised of the County's position and comment on this option. It also signals that they are preparing a document to justify a pre-determined outcome. Their interest is not to ensure this Project is carried out in the manner best for the human environment. If this were the case, they would not hesitate to reveal to the public and decision makers how the two alignments compare.

The Authority is Mandated by Law to Preserve Agriculture

Agriculture is a way of life for Kings County and its economy depends on it. According to Kings County's 2010 Agricultural Crop Report, the gross value of all agricultural crops and products produced during 2010 in Kings County was \$1,717,971,000¹⁵. Kings County is ranked 1st among California counties in the production of cotton lint. It is 2nd among California counties in the production of cottonseed, and 3rd in the production of apricots, nectarines, and plums. It produces 9.1% of all milk and cream in the State, making it the State's 5th largest milk producing county. It ranks 11th among California counties in agricultural production (*see pg. 13*). Commodities from Kings County are exported to 43 countries of the World (*see pg. 18*). Kings County has a population of approximately 155,000 and consists of 1,391 square miles of total land. Kings County has 810,000 acres designated for agricultural use, 655,132 acres of which are harvested crop. Kings County remains one of the highest statutorily contractually protected agricultural land to total county-wide acreage ratios in the State, with 675,000 acres protected by agricultural preservation contracts (Kings County 2035 General Plan, Resource Conservation Element, Section B, Page RC-16). This contractual protection derives from a California statutory scheme known as the California Land Conservation Act of 1965 (quoted and discussed below) with the specific purpose of preserving this finite, irreplaceable land.

It is disturbing that the Authority appears to look the other way with respect to the State of California's mandate to preserve prime agricultural land, which states:

*"(a) It is the policy of the State to avoid, whenever practicable, the location of any federal, state, or local public improvements and any improvements of public utilities, and the acquisition of land therefore, in agricultural preserves. (b) It is further the policy of the state that whenever it is necessary to locate such an improvement within an agricultural preserve, the improvement shall, whenever practicable, be located upon land other than land under a contract pursuant to this chapter. (c) It is further the policy of the state that any agency or entity proposing to locate such an improvement shall, in considering the relative costs of parcels of land and the development of improvements, give consideration to the value to the public..., of land, and particularly prime agricultural land, within an agricultural preserve."*¹⁶

¹⁵ See attached 2010 Kings County Agricultural Crop Report

¹⁶ California Land Conservation Act of 1965 (aka "Williamson Act") Gov. Code Section 51200, et seq.; 51290; See also Farmland Security Zone provisions at sections 51296-51297.4.

The California Department of Conservation, Division of Land Resource Protection, monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other land conservation programs, including farmland security zone contracts (Gov. Code section 51296-51297.4). Farmland security zone contracts are initially 20 year contracts that apply to land that is designated on the Important Farmland Series maps as predominantly one or more of the following: (a) Prime farmland; b) Farmland of statewide significance; (c) Unique farmland; d) Farmland of local importance. The public acquisition provisions of the Williamson Act (Govt. Code (GC) §51291 (b)) require an agency to notify the Director of the Department of Conservation of the possible acquisition of any land located in an agricultural preserve for a public improvement. Such notification must occur when a public agency **first considers** the land for a public improvement. (Emphasis added).

The Williamson Act further requires avoidance of contracted land where possible:

"[n]o public agency or person shall locate a public improvement within an agricultural preserve unless both the following findings are made (§51292):

- *The location is not primarily on a consideration of the lower cost of acquiring land in an agricultural preserve; and,*
- *If the land is agricultural land covered under a contract pursuant to this chapter for any public improvement, that there is no other land within or outside the preserve on which it is reasonably feasible to locate the public improvement." [Emphasis added] [Government Code §51290(a)(b).]*

The rail alignment proposed through Kings County impacts at least 64 parcels of land under 10-year Williamson Act contracts and 34 parcels of land under the 20-year farmland security zone contract provisions of the Williamson Act. Destroying prime ag land simply because it is more economical, is not acceptable and fails to comply with both State and Federal mandates.

The National Agricultural Land Study of 1980-81 found that millions of acres of farmland were being converted in the United States each year. The 1981 Congressional report, *Compact Cities: Energy-Saving Strategies for the Eighties*, identified the need for Congress to implement programs and policies to protect farmland and combat urban sprawl and the waste of energy and resources that accompanies sprawling development.

The *Compact Cities* report indicated that much of the sprawl was the result of programs funded by the Federal Government. With this in mind, Congress passed the Agriculture and Food Act of 1981 (Public Law 97-98) containing the Farmland Protection Policy Act (FPPA)—Subtitle I of Title XV, Section 1539-1549. The final rules and regulations were published in the Federal Register on June 17, 1994.

The FPPA is intended to minimize the impact Federal programs have on the unnecessary and irreversible conversion of farmland to nonagricultural uses. It assures that—to the extent possible—Federal programs are administered to be compatible with state, local units of government, and private programs and policies to protect farmland.

FPPA protection extends to prime farmland, unique farmland, and land of statewide or local importance, and even farmland not currently used for cropland. It can be forest land, pastureland, cropland, or other land, but not water or urban built-up land. The *California Department of Conservation Important Farmland Mapping and Monitoring Program* identifies these farmland categories throughout the State of California.

To put this in Kings County perspective, the Authority's proposed single alternative HSR alignment through Kings County would traverse 34 parcels classified as prime farmland, 62 parcels classified as farmland of statewide importance, 24 parcels classified as unique farmland and 20 parcels classified as confined animal. These parcels of land total more than 8,000 acres. Yet, as of the drafting of this letter, the Authority snubs both the Williamson Act and the FPPA. We are informed it has **not** notified the California Department of Conservation that the proposed alignment may require the acquisition of these important, "protected" lands.

Projects are subject to FPPA requirements if they may irreversibly convert farmland (directly or indirectly) to nonagricultural use and are completed by a Federal agency or with assistance from a Federal agency. The HSR project will convert farmland to urban use as the Project is to be of permanent design intended to serve the transportation needs of large urban population centers.

All of the Authority's advanced alignments that run through Kings County will require the development of a "new" transportation corridor. With this new corridor will come increased urban sprawl into now extremely productive and valuable agricultural lands. The only alternative that would avoid this is for the HSR to stay on the Highway 99 alignment so that a new corridor will not be created. However, as explained earlier, the Authority has eliminated from consideration this reasonable alternative, the only alternative that is in compliance with the above stated federal and state laws and the will of the people who approved the *Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century*.

The Authority Ignores the Critical Planning Efforts of Kings County

As California continues to experience unprecedented population growth, the State Legislature has enacted progressive measures to ensure more efficient and well planned land use decisions occur at the local level. In 2000, the *Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000* (Gov. Code §556000, et seq.) was established to ensure orderly and efficient local agency boundaries that discourage urban sprawl, preserve open-space and prime agricultural lands, and efficiently extend governmental services. In 2003, Assembly Bill 170 passed requiring all cities and counties in the San Joaquin Valley to include an air quality element in their general plans. In 2006, Assembly Bill 32 was adopted creating the *California Global Warming Solutions Act of 2006* (Health & Safety Code §38500, et seq.), which set the greenhouse gas emissions reduction goal into law. In 2008, Senate Bill 375 was signed requiring the development of a "sustainable community's strategy" in each county represented by a metropolitan planning organization to demonstrate how the region will meet greenhouse gas reduction targets, integrate land use, housing and transportation planning.

As a rural, agricultural county with limited resources, Kings County fully embraced the California Legislature's progressive laws and the San Joaquin Valley Blueprint that sought to

coordinate compact and efficient urban growth within the eight counties that make up the San Joaquin Valley. Kings County recognizes the need to be a part of better regional planning so as to enhance future growth accommodation and investment in regional transportation infrastructure. Following from this local buy-in to State and regional efforts, the Local Agency Formation Commission of Kings County updated all City and Community District sphere of influence growth boundaries and removed 11,000 acres from future growth consideration for agricultural protection. This action received the California Association of Local Agency Formation Commissions 2008 Project of the Year Award.

In addition, Kings County developed an award-winning 2035 Kings County General Plan that was adopted on January 26, 2010. The General Plan concentrates and directs compact urban growth into existing cities and special district served communities, while establishing progressive protection policies for the preservation of prime farmland and natural resources. This General Plan created cutting edge prioritized agricultural land mapping to identify farmland of highest priority to the County, and created smart growth oriented community plans for each of the County's district served unincorporated communities. As a result, Kings County received an "Award of Achievement" for Community Plans – Unincorporated Community, and an "Award of Merit" for Sustainable Development Policies from the San Joaquin Valley Policy Council. The Council is comprised of elected officials from the eight valley counties. It oversees the San Joaquin Valley Blueprint Project.

Despite all of Kings County's efforts to embrace forward thinking progressive land use planning consistent with the State of California's intent and needs for future generations, the California High Speed Rail Authority, staff, and consultants have acted to completely sidestep and avoid consideration of all of these local plans, policies and efforts. The Authority's avoidance of such local planning efforts is avoidance of the very framework of good local and regional planning efforts as mandated by the California Legislature. The Authority staff has emphatically stated that their Project need only coordinate with federal agencies that include U.S. EPA, Army Corps of Engineers, and Federal Railroad Administration. The Project, as conducted by the Authority, its staff, and consultants, continue to prepare detailed rail plans behind closed doors with no meaningful discussion or engagement with Kings County or any other local communities of interest that will be directly impacted.

Congress mandated your agency to coordinate with local governments when preparing an EIS to avoid this travesty. The Council on Environmental Quality provides guidance for this purpose. However, the Authority has refused to analyze and discuss with us ways to resolve the irreversible destruction of our irreplaceable resources. This approach to a federally funded project flies in the face of NEPA and compounds the local governments' difficulties in protecting the public health, safety and welfare of communities.

A preliminary alternative along State Highway 99 corridor was identified in the Programmatic EIR/EIS. It presented a possibly viable alternative for Kings County. However, despite Kings County's request to review the analysis which purportedly supported elimination of this alternative, the Authority has chosen not to disclose or share that information. Other rail systems in California such as in San Francisco and Long Beach, have utilized existing highway transportation corridors to leverage existing transportation right-of-way land resources. The chosen route for the Fresno-to- Bakersfield segment of the Project has been to avoid existing

transportation corridors and focus resources on less costly prime agricultural land. This approach conflicts directly with the prioritized, award-winning, agricultural land preservation policies designed to prohibit urban encroachment and protect the County's highest producing agricultural lands.

Many Project related questions remain unanswered. The most obvious center on how the specifically detailed conflicts with County plans, policies and resources will be resolved. But these are compounded by undisclosed needs and impacts related to the extensive electrical energy infrastructure that will be needed to operate the Project. The needs, questions and impacts grow when you factor in a potential station on the eastern outskirts of the City of Hanford. Such improvement is not anticipated within Hanford's general plan land use or within the urban growth sphere of influence as established by LAFCO of Kings County. The planning adjustments, design, service infrastructure, funding, and timing of such station are mere afterthoughts. One can only wonder at a proposal to place an admittedly growth-inducing station in an area planned and defined for highest priority preservation of county agricultural land. And yet, the Authority's response to these concerns has simply been "await the release of the EIR/EIS". Critical billion-dollar decisions are being made without the necessary information and exchange that can be obtained through meaningful coordination.

The Law Requires the HSR Follow Existing Corridors

A Programmatic EIR was completed in 2005, and Record of Decision ("ROD") supporting the High Speed Rail alternative was issued on November 18, 2005. It specifically made two decisions: 1) to support a high speed system, and 2) to determine conceptual corridors. The ROD states the Program EIR/EIS "is making *initial* and *basic* decisions on the proposed HST system" (emphasis added), it involves conceptual planning, and "it does not assess future actions to implement an HST system at specific locations" because this will be done at a later date for project-level evaluations.

The *Safe, Reliable, High-Speed Passenger Bond Act For the 21st Century* mandates that the Project be designed and constructed to achieve the following:

- ****(g) In order to reduce impacts on communities and the environment, the alignment for the high-speed train system shall follow existing transportation or utility corridors to the extent feasible and shall be financially viable, as determined by the authority.*
- (h) Stations shall be located in areas with good access to local mass transit or other modes of transportation.*
- (i) The high-speed train system shall be planned and constructed in a manner that minimizes urban sprawl and impacts on the natural environment.*
- (j) Preserving wildlife corridors and mitigating impacts to wildlife movement, where feasible as determined by the authority, in order to limit the extent to which the system may present an additional barrier to wildlife's natural movement." (See §2704.09; Emphasis Added).*

The alternate proposed through Kings County directly defies the mandate to follow existing transportation corridors and to locate stations near population centers and minimize

urban sprawl. Although the Authority indicates it had meetings with various government personnel in both the City of Hanford and at the County level over the years, they were more along the lines of drops-ins to various department heads with no specific information. The prevailing belief in the Kings/Tulare area of the Valley was that the City of Visalia in Tulare County was intensely lobbying to have the alignment follow Highway 99 so that a station could be situated at the airport at the edge of the City along Highway 99. In fact, the Visalia-Tulare-Hanford Station Feasibility Study Final Report (August 1, 2007) prepared by the California High Speed Rail Authority identified the first potential station location to correspond to the Highway 99 corridor and that seven of the initial alternative alignments could serve a station located there. A station located at Highway 198 near Hanford was for secondary consideration. The Authority determined to eliminate Highway 99 alignments as they would be "more complex to build, due to the proximity to both the UPRR corridor and Highway 99, a limited access highway with frequent interchanges and overcrossings." The Kings County alternative was identified as preferable due to there being mostly agricultural land and less interference with adjacent highway and rail infrastructure. To date, the Authority has not provided a full analysis of how this determination was made. Section 5.1.3 indicated that the W99 Alternative [which represented an alternative that included a station near Highway 99 and the City of Visalia airport which City of Visalia had intensely lobbied] along the UPRR/SR-99 corridor was considered a 'greenfield' alternative, passing largely through farmland and passing just west of cities and communities along the Highway 99 corridor, yet was "eliminated" from further consideration. In addition, Section 4.1 of this report (Agencies/Groups Contacted) clearly indicates that Kings County was not a local government entity represented in assessing impacts including those to agriculture specifically, yet the chosen station alternative was to be located within the County's jurisdiction. Analysis identified the currently proposed Station site (identified as "198 West") as falling within the jurisdiction of the City of Hanford where the City has planned highway development and would require that developers prepare a detailed plan for City approval. This, however, has never been a formal position by the City of Hanford.

The Authority insists on pursuing an alignment that digresses from existing transportation corridors and population centers to destroy prime agricultural land, threaten the lifelong investment of farmers, and threaten national security by affecting the food supply produced in Kings County when they have a perfectly viable accepted and longed for alternative along Highway 99 (and related community centers) which they have avoided simply because it is too difficult, or conversely because it is easier to go through ag land.

The Authority has Pre-Determined the Outcome

The Authority has violated NEPA and CEQ by unlawfully pre-selecting a "single" alternative through Kings County before even completing the environmental review. Any environmental document the Authority releases will not be credible simply because it is going through the motion with a pre-determined outcome. It has done so by indicating that it must build the Merced to Bakersfield (the middle) segment first so that it can *test* the train to ensure it is *high speed*. This approach has been described as a possible train to nowhere. If the *test* fails to produce or money runs out, it will be just that. This middle-first approach also pre-determines the north and south routes, which must connect to the middle. All of this, without even completing the environmental review of *all* possible alternatives for the middle segment.

What this tells the people of Kings County and the Central Valley is that they do not matter and are expendable in the interests of a multi-billion dollar project. Simply stated, the agricultural community of Kings County was thought to be the path of least resistance. They are an avenue to billions of dollars of ARRA money that must be spent or lost. This approach exposes the Authority to considerable litigation. It is not letting the multi-million dollar study determine the most feasible project with the least environmental harm. It is letting the tail wag the dog.

This conclusion is supported by a recent statement in the report of the California Legislative Analyst: "The California High-Speed Rail Authority (HSRA) recently approved plans to **begin construction** in fall 2012 on a portion of the system costing roughly \$5.5 billion through the Central Valley that spans from north of Fresno to north of Bakersfield." How can it *begin construction* if it has not even completed or issued EIR/EIS which is expected to be released some time in late July or early August?

Guidelines implementing NEPA prohibit the pre-commitment of resources to a project because it pre-determines outcomes and defies the law requiring a full study of the environmental impacts of a proposed project. In 40 CFR 1500, Section 1502.2, it reads:

- *(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision.*
- *(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.*

The County's Community Development Agency Director was contacted on June 15, 2011, by Baker Commodities' consultant, Gary Gussing, to begin discussion on how the County will work with them to relocate Baker Commodities' facility to accommodate the proposed HSR alignment through Kings County. Baker Commodities is one of three rendering facilities in the Central Valley that receive and process cow carcasses generated as part of the extensive dairy, cattle and meat packing industry in the Central Valley of California.

Apparently, HSR staff is assuming the facility will be destroyed by the rail line and have undertaken a plan to re-locate the facility. Mr. Gussing stated that HSR indicated that they will likely start construction on the current Baker site in 2014, and that Baker would have about a year or two to work with the County to get their new facility permitted and operational before their existing facility is demolished. He stated that HSR was willing to pay the County for expediting the process in order to avoid downtime. This information is only one example of the Authority's willingness to defy the law to accomplish their pre-set objectives with a single rail alignment in Kings County.

The Authority's Ability to Deliver Ridership and Economic Feasibility is in Question

The Authority is not deserving of the Project entrusted to them and has squandered the hopes and resources of the People. This is not even a recent theme. This is a repeating theme as

will be shown through the testimony of Joseph Vranich and the recent California Legislative Analyst Office report discussed below.

On October 25, 2008, former High Speed Rail Association CEO, Joseph Vranich, provided 12 minutes of candid, jaw dropping testimony to the State Senate Transportation and Housing Committee regarding the Authority's work on the High Speed Rail Project¹⁷. He was asked to appear because of his 40-year work with and advocacy of high speed rail. He is the author of "Super Trains." He, "for the first time" in his life could not endorse high speed rail, because he found the Authority's work "regrettably, to be the poorest I have ever seen." He indicated the Authority's plan was untenable, stating: "the train will be slower than they say it will; will carry fewer people than they claim it will; and will cost much more than they admit it will." He exclaimed that the ridership projections are "so far from reality that I have to call it what it is – science fiction." He said the Authority's load factor figures exceed some of the best systems in the world. "This, simply put, cannot be believed." He said that in order to achieve the predicted travel times between key destinations, the system would have to operate at an average speed of 196 MPH. This, he said, is "a feat that has yet to be accomplished anywhere in the world." He indicated "ridership projections rely on super bargain fares – far lower than fares are in 2007 on high speed rail systems." For perspective, he added: "The Authority wants us to believe that the per mile charge in 2030 will be 1/7th what Amtrak charges today [2008] between New York and Washington. This also cannot be believed." He indicated the costs and profitability figures are "not credible", and the design information provided is "like looking at a bowl of spaghetti it's so jumbled" – this from an expert in the field. He continued "what appears in thousands of pages of documents fails to address the mandates in AB3034." He reiterated that high speed rail holds great promise, but based on the fact that "the work of the Authority is so deficient" and the Authority has failed to learn from the failures of Texas, Florida and Los Angeles to San Diego "as if they never read a single page of history" he reluctantly concluded "it forces me to say it is time to dissolve the California High Speed Rail Authority. Give it no more funding than is required for terminating contracts and transferring data and duties to a more responsible agency and conducting an orderly shut down."

It has not improved since Mr. Vranich testified. On May 10, 2011, the California Legislative Analyst Office issued a highly critical report regarding the Authority and its conduct of the Project and offered recommendations for its success.¹⁸ The report, in great part, concludes exactly what Mr. Vranich did in 2008. The Executive Summary of the Report indicates:

"A Number of Problems Threaten Successful Development of High-Speed Rail. *In this report, we describe a number of problems that pose threats to the high-speed rail project's successful development as envisioned by Proposition 1A. For example, the availability of the additional funding assumed in a 2009 business plan as necessary to complete the project is highly uncertain and federal deadlines and conditions attached to the funding already provided to the state*

¹⁷ <http://www.youtube.com/watch?V=SSORD6dqpKY>

¹⁸ http://www.lao.ca.gov/reports/2011/trns/high_speed_rail/high_speed_rail_051011.aspx for full report

would limit the state's options for the successful development of the system. In addition, the existing governance structure for the project is inadequate for the imminent development and construction stages and the Legislature lacks the good information it needs to make critical multi-billion dollar decisions about the project that it will soon face."

Presidential Executive Order 13423 (1/24/2007) states: "It is the policy of the United States that Federal agencies conduct their environmental, transportation, and energy-related activities under the law in support of their respective missions in an environmentally, economically and fiscally sound, integrated, continuously improving, efficient, and sustainable manner." Activities should "improve energy efficiency and reduce greenhouse gas emissions of the agency..."

Mr. Administrator, the Authority has violated numerous Federal and State laws, as well as Presidential Executive Orders in their preparation of the environmental study. Now it is even questionable if they can carry out this Project in an economically feasible, self-sustaining manner. Will "the largest infrastructure project in the nation" end up becoming the greatest misuse of our natural and economic resources? All of this could be avoided if the Authority is required by you to do the environmental compliance required by law.

Conclusion

The Department of Transportation, Federal Railroad Administration's High-Speed Intercity Passenger Rail Program ("HSIPR") guidelines reiterate that "NEPA mandates that all reasonable alternatives be considered" during the environmental review process and that the FRA, as the federal sponsoring agency, "has primary responsibility for assuring NEPA compliance while accomplishing the purposes, priorities, and requirements of the HSIPR Program."¹⁹ The County of Kings implores the FRA to ensure that the Authority abides by federal law and takes our concerns seriously to avoid litigation.

The federal Intergovernmental Cooperation Act, relating to development assistance, requires coordination and indicates that regulations shall provide for the consideration of concurrently achieving the following specific objectives: "... (c) to the extent possible, all national, regional, State, and local viewpoints shall be considered in planning development programs and projects of the United States Government or assisted by the Government... (d) To the maximum extent possible and consistent with national objectives, assistance for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning...."²⁰

Presidential Executive Order 13352 was issued to "...ensure that the Departments of Interior, Agriculture, Commerce, and Defense and the Environmental Protection Agency implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation, with an emphasis on appropriate inclusion of local participation in

¹⁹ Docket No. FRA-2009-0045

²⁰ 31 USC, Sub V, Ch 65, Section 6506

Federal decision-making, in accordance with their respective agency missions, policies, and regulations.”

As outlined herein, the Authority is ignoring the local planning guidelines, ignoring the health, safety and welfare concerns raised with specificity, and proposing to annihilate prime agricultural land in contradiction of the statewide mandate that, to the extent possible, the alignment will be along an existing transportation corridor.

As the duly elected Board of Supervisors of Kings County, we insist you withhold approving the release of the Draft EIR/EIS until it is brought into compliance with the laws and regulations as stated in this notice. Further, to avoid litigation and lengthy delays, we demand you and your agent, the High Speed Rail Authority:

- 1) Comply with the National Environmental Policy Act of 1969 (“NEPA”), California’s Environmental Quality Act (“CEQA”) and other laws, and ARRA funding conditions in carrying out the Project;
- 2) Develop Highway 99 through western Visalia as a “reasonable alternative” to resolve the conflicts with our county;
- 3) Fulfill your duty under federal law to coordinate the HSR Project with Kings County

For these and other purposes, we request a meeting with you Mr. Szabo on August 30, 2011, at 2:00 p.m. (PST), in the County Board of Supervisors’ Chambers, 1400 W. Lacey Boulevard, Building No. 1, Hanford, California, 93230, to apprise you directly of our concerns that must be considered in your Draft EIR/EIS. If this date does not work with your schedule or your designees, please call Deb West, Assistant County Administrative Officer, by 4:00 p.m. (PST) on August 12, 2011, to work out an alternative mutually agreeable time.

We look forward to your prompt response as to the planning and lawful implementation of this Project.

Sincerely,

County of Kings
Board of Supervisors



By: Richard Fagundes,
Vice-Chairman

cc: Thomas J. Umberg, Chairperson,
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The Honorable Jim Costa
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